

**Before the
FEDERAL COMMUNICATIONS INDIANA COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for our Future)	WC Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	

**INITIAL COMMENTS OF
THE INDIANA UTILITY REGULATORY INDIANA COMMISSION**

Introduction

The Indiana Utility Regulatory Commission (Indiana Commission) respectfully submits these initial comments regarding the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking on Reform of the Universal Service Fund (USF) and Intercarrier Compensation (USF/ICC NPRM).¹ The Indiana Commission applauds the FCC's acknowledgment, through the issuance of this NPRM, that the current USF and intercarrier compensation regime can be significantly improved. Given the scope of the USF/ICC NPRM, the Indiana Commission focuses its comments primarily on those areas where the Indiana Commission takes exception to proposals contained therein.

¹ These comments do not address Section XV of the USF/ICC NPRM. The Indiana Commission filed comments on Section XV of the USF/ICC NPRM on March 25, 2011.

Importance of Urban and Rural Broadband Parity

As the FCC proceeds with its efforts to expand the concept of universal service to explicitly include broadband, it needs to keep in mind issues of parity between urban and rural America. Rural areas not only need to have broadband service, but also to have parity of such services with urban areas. This is a matter not only of the Indiana Commission's opinion, but Congressional intent. Indeed, Section 254(b)(3) of the Telecommunications Act of 1996 requires, in pertinent part, that "consumers in all regions of the Nation, including ... those in rural, insular, and high cost areas, should have access to telecommunications and information services ... that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."² The Indiana Commission cautions the FCC to guard against the establishment of a digital divide between urban and rural areas caused by its proposals to expand broadband access to rural areas. There is room for extensive reform and yet still remain within this stated legislative intent.

The National Broadband Plan (NBP) recommended that the FCC initially condition universal service support for broadband on achieving actual download speeds of at least 4 Mb/s and actual upload speeds of at least 1 Mb/s.³ The Joint Board on Universal Service (Joint Board) believes that it is appropriate for the Universal Service Fund to support networks that provide broadband service, in addition to voice service; and that the FCC should specifically find that universal service support should be directed where possible to networks that provide advanced services, as well as voice services. Furthermore, the Joint Board found that "[s]uch a principle is consistent with section 254(b)(3) of the Communications Act...and would serve the public interest."⁴ The Indiana Commission supports FCC action on the Joint Board's recommendation by proposing to adopt this principle pursuant to section 254(b)(7).⁵

Nonetheless, the Indiana Commission is concerned the FCC proposals to reform USF, at best, threaten the realization of urban/rural parity required by Section 254(b)(3) and, at worst, result in an outright violation of this legal mandate. The Indiana Commission reiterates its prior comment that the loss of traditional USF support to the existing voice service providers will lead to higher rates or the ceasing of operations (resulting in the loss of service availability), both of which would also represent a violation of Section 254(b)(3). Furthermore, to the extent the support for the lower speeds (4 Mb/s downstream and 1 Mb/s upstream) is provided only in **rural** unserved areas, this type of action "may well violate the spirit if not the letter of Congressional intent in 47 U.S.C. § 254(b)(3)".⁶

² Codified at 47 U.S.C. 254(b)(3). Emphasis added.

³ National Broadband Plan, ch. 8, at 135.

⁴ Joint Board Recommended Decision, ¶ 75 (FCC 10J-3, rel. Nov. 4, 2010).

⁵ NPRM, ¶ 59. See also ¶ 58.

⁶ *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, Initial Comments of the Indiana Utility Regulatory Commission, 5 (filed July 14, 2010).

The Indiana Commission is not alone in its concern for the realization and preservation of urban/rural parity with regard to telecommunications services. Joint Board State Member John D. Burke, in his separate Lifeline statement, cautioned against the creation of a

“...rural Digital Divide, due to lack of clarity as to how much funding will be necessary to enable ubiquitous broadband, notwithstanding the [FCC’s] estimates in the NBP. Existing broadband deployment is not fully known. Furthermore, the [FCC’s] cost estimates are also based, in part, upon a wireless solution that may or may not deliver adequate broadband services, particularly in rural, high-cost states.”⁷

As it considers how best to provide support for broadband and advanced services and to reform the universal service mechanisms, the Indiana Commission urges the FCC to seize the opportunity to rethink its approach to expanding in broadband rural areas in order to ensure that the rules it ultimately adopts comply with both the spirit and clear Congressional intent of Section 254(b)(3) and do not lead to creation of a rural Digital Divide or drive scores, if not hundreds of small businesses (RLECs) into failure or bankruptcy.

Rural Carriers Heavily Depend on Existing System of USF and Intercarrier Compensation

As another initial matter, the Indiana Commission stresses to the FCC the importance of the current system of USF and intercarrier compensation to Indiana rural carriers and consumers. Indeed, rural carriers depend quite heavily on the current support provided by federal USF and access charges. By their very nature, the RLECs’ networks, like those of virtually all communications providers, have a cost structure comprised predominantly of fixed costs or costs which, at least over the intermediate term, are for practical purposes fixed. If we assume, *arguendo*, that 80% of such are fixed, this means that a one percent decline in revenues results in a five percent (5%) shortfall in coverage of variable costs. Thus a decline of just five percent (5%) could leave a devastating impact on both the profitability and the viability of these small businesses. Regardless of whether revenues are calculated based on jurisdictional (intra- and/or interstate) data or omni-jurisdictional (intra- plus interstate as well as revenues from sources classified previously as “informational services” [e.g. broadband]), it is extremely doubtful that such declines would be survivable.

For calendar year 2009, Indiana Rural Local Exchange Carriers (RLECs) collectively counted on federal USF and access charges for over half of their total operating revenue. Ten Indiana RLECs depended on USF and access charges for over 70% of their operating revenue. Any major reduction in either federal USF and/or changes to intercarrier compensation policy will significantly impact the revenue received by Indiana RLECs. In addition, Indiana consumers also contribute almost \$12 million in state USF support to these companies. These figures demonstrate that Indiana RLECs, like their counterparts across the nation, need continued

⁷ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-1-09, Statement of Board Member John D. Burke Approving in Part, Concurring in Part.

support from federal USF, but Indiana itself has also provided additional necessary assistance to Indiana rural carriers. The implementation of USF/intercarrier compensation policy changes is not theoretical but can have real and potentially detrimental effects on rural carriers and consumers. Indiana has already undergone reform of intrastate access rates, which now mirror interstate rates. Generally, the Indiana Commission implores the FCC to proceed extremely cautiously with any contemplated changes in USF and/or intercarrier compensation regimes.

Proposals for Immediate Universal Service Fund (USF) Reforms

In this NPRM, the FCC proposes to make fundamental changes in the design of financial support provided to carriers purported to ensure the availability of affordable telecommunications services in the rural parts of the United States. The FCC intends to eventually convert different discrete universal service fund (USF) mechanisms that constitute the existing high-cost fund, into a single Connect America Fund. In the short run, the FCC proposes to modify all five of the existing high-cost programs in the hopes of gaining efficiencies and cost savings, and to then “repurpose” those dollars. Small rural carriers (and a few mid-size companies), and by extension, consumers served by these carriers, have come to heavily count upon the USF support provided from three of those high-cost fund programs: High-Cost Loop Support (HCLS), Local Switching Support (LSS), and Interstate Common Line Support (ICLS). Certain price cap companies also receive USF funding – through Interstate Access Support (IAS) and high-cost model support. Competitive Eligible Telecommunications Carriers (CETCs) operating in the territories of ILECs are eligible to receive the support received by the ILECs. The Indiana Commission appreciates the opportunity to comment on these proposed near-term reforms.

A stated goal of this NPRM is to achieve the broadband deployment goals of the National Broadband Plan.⁸ The Indiana Commission strongly asserts that the FCC needs to acknowledge and continue to support the broadband deployment that has already taken place in rural areas through the assistance of the USF. Finger-pointing regarding the method by which RLECs have historically funded rural broadband buildout is counterproductive.

HCLS is designed to help offset the non-usage based costs associated with the local loop in areas where costs to provide voice service exceed 115% of the national average cost per line.⁹ The FCC’s “no barriers to advanced services” policy has resulted in HCLS already facilitating the deployment of loop facilities capable of providing broadband services, like high speed Internet and video services, in rural parts of the United States.¹⁰

Rural carriers that have deployed broadband-capable loop facilities are counting on continued HCLS support in order to service debt acquired to fund the capital investment in those

⁸ FCC USF/ICC NPRM ¶ 1.

⁹ *Id.* at ¶ 167.

¹⁰ *Id.* at ¶ 170.

loops in the first place. Many rural carriers have deployed broadband infrastructure, and consumers served by these carriers are enjoying the benefits of these advanced services. The Indiana Commission is concerned that the FCC proposals to revamp HCLS seem to give short shrift to the substantial existing deployment of broadband by current recipients of HCLS. Indeed, the FCC should carefully consider the impact that any short term changes in HCLS will have on carriers that have already made investment in broadband and customers with broadband service made possible indirectly with the assistance of HCLS.

Competitive Bidding Process to Award CAF Support

The FCC proposes to use a one-time competitive bidding (reverse auction) process to award a significant amount of CAF funding— tentatively between \$500 million and \$1 billion – to be used for supporting broadband investments, “with additional auctions potentially to follow.”¹¹ The Indiana Commission is concerned about the use of reverse auctions for determining who will build out broadband in unserved areas with USF funding, particularly given the FCC’s proclivity for employing combinatorial bidding in the auction process. This approach is one which will likely require highly sophisticated modeling and high-powered computers, particularly since the process in this case is intended to identify the lowest/least expensive bidder:

“Imagine the most mind-numbing choice you’ve faced lately...the anxiety you felt might have been just the well-known consequence of information overload. Angelika Dimoka, director of the Center for Neural Decision Making at Temple University, suspects that a more complicated biological phenomenon is at work. To confirm it, she needed to find a problem that overtaxes people’s decision-making abilities, so she joined forces with economists and computer scientists who study “combinatorial auctions,” bidding wars that bear almost no resemblance to the eBay version. Bidders consider a dizzying number of items that can be bought either alone or bundled, such as airport landing slots. The challenge is to buy the combination you want at the lowest price – a diabolical puzzle if you’re considering, say, 100 landing slots at LAX. As the number of items and combinations explode, so does the quantity of information bidders must juggle: passenger load, weather, connecting flights. Even experts become anxious and mentally exhausted. In fact, the more information they try to absorb, the fewer of the desired items they get and the more they overpay or make critical errors.”¹²

¹¹*Id.* at ¶ 24.

¹² “I Can’t Think!” *Newsweek*, February 27, 2011.

The Indiana Commission is concerned that this process may result in skewing the bidding process against many of the smaller RLECs that today depend on USF to provide affordable telephone service, as well as smaller, midsize, or regional wireless providers, in favor of large wireless providers, which are rapidly consolidating market share. The Indiana Commission asserts that small RLECs have consistently provided reliable and affordable service, and smaller regional wireless providers offer a valuable competitive alternative to large wireless carriers. The Indiana Commission warns the FCC to carefully consider and mitigate the impact of the auction process on the ability of the smaller providers who have served customers well but simply lack the capacity to compete in sophisticated reverse auctions. Additionally, the Indiana Commission believes that the FCC should confirm the soundness of any assumptions regarding the continued availability of wireline backhaul facilities that would be needed by wireless carriers who might compete for CAF support. If USF support that currently goes to RLECs is moved into the CAF and awarded to other carriers, the viability of the existing RLECs, that receive support and also provide the vital backhaul facilities that wireless carrier need, may be put into jeopardy.

Elimination of the Identical Support Rule

The FCC proposes to eliminate the identical support rule, which heretofore has allowed CETCs to receive the same amount of support per line that is provided to the incumbent ETC in a given service area. The FCC believes that the identical support rule does not efficiently promote mobile voice and/or fixed or mobile broadband.¹³ The FCC further believes that ubiquitous mobile coverage must be a national priority. The Indiana Commission affirms the FCC for proposing elimination of the identical support rule. At the same time, there are those relatively small wireless providers that have built a business model based on service focused primarily on rural customers, as opposed to those large providers for whom service to rural residents is incidental to service provided on a drive-by basis to urban residents; those small wireless providers may need and be deserving of continued support.

The Indiana Commission believes that support should be provided to predominantly rural-oriented wireless providers based on a cost showing of their own costs, where half or more of their customers reside in D counties or parishes. The Indiana Commission recommends that this proposal, albeit likely to be minimal in comparison to the funds currently allocated to CETCs under the identical support rule, be put out for further comment.

The Indiana Commission supports wholeheartedly the elimination of the identical support rule in its current form, inasmuch as it was largely dysfunctional in its execution from its inception, often resulting in providing support to multiple providers. The Indiana Commission encourages the FCC to redirect the funds saved by reforming the rule in order to serve areas that do not today currently have broadband service and/or to fund a specific Mobility Fund, as

¹³ *Id.* at ¶ 242.

previously contemplated by the FCC.¹⁴ Nonetheless, the Indiana Commission believes that expansion of the availability of wireless service should occur simultaneously with, rather than at the expense of, existing broadband deployed on a wireline basis.

Proposals for Long Term USF Reforms

Renaming and Repurposing the USF

The Indiana Commission raised this same point in previous comments filed with the FCC.¹⁵ In the USF/ICC NPRM, the FCC also proposes long term changes in programs and policies on USF and Intercarrier Compensation. While the short term reforms proposed by the FCC in this rulemaking are adjustments to the existing USF system, the long term proposals represent a substantial change in policy. Both the modification/elimination of existing voice USF programs and the creation of the CAF to support broadband represent nothing less than a drastic paradigm shift away from financial support targeted to circuit-switched voice services to the promotion of capital expenditures for packet-based broadband in rural areas through the use of USF subsidies. The FCC's practice of using universal service reform to facilitate the implementation of the NBP is seen very clearly in the FCC's long-term plan to eliminate all existing high-cost support and to replace all five of the existing high-cost mechanisms with a single new fund – the CAF,¹⁶ over a 10-year period.¹⁷ The CAF funding would also replace all implicit subsidies the FCC may believe are contained in intercarrier compensation rates today.¹⁸ By the end of the ten years, support would no longer be available from the five existing high-cost programs for circuit-switched networks used to provide traditional voice services.¹⁹ Rather, high-cost support dollars would be “repurposed” from existing circuit-switched voice services toward incremental capital expenditures for broadband networks that could support voice and other IP-based applications. In essence, the FCC is seeking to use the universal service concept and create a fundamental paradigm shift of – not just the universal service programs themselves, but of the communications ecosystem as a whole.

¹⁴ See *In the Matter of Universal Service Fund Mobility Fund*, WT Docket 10-208, Indiana Commission comments filed December 17, 2010. See also *The unanimous Recommended Decision of the Federal-State Joint Board on Universal Service*, released November, 2007.

¹⁵ *In the Matter of Connect America Fund, National Broadband Fund, and High-Cost Universal Service Support*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, IURC Initial Comments at 2, 3 (filed July 14, 2010).

¹⁶ *In the Matter of Connect America Fund*, et al., WC Docket No. 10-90, ¶ 398 (FCC 11-13, rel. Feb. 9, 2011).

¹⁷ NBP at page 150, recommendation 8.13. The FCC has suggested that CAF funding might ultimately replace all universal service support, not just high-cost support. *In the Matter of Connect America Fund*, et al., WC Docket No. 10-90, ¶ 416 (FCC 11-13, rel. Feb. 9, 2011).

¹⁸ *In the Matter of Connect America Fund*, et al., WC Docket No. 10-90, ¶ 400 (FCC 11-13, rel. Feb. 9, 2011).

¹⁹ The FCC has suggested that CAF funding might ultimately replace all universal service support, not just high-cost support. *In the Matter of Connect America Fund*, et al., WC Docket No. 10-90, ¶ 416 (FCC 11-13, rel. Feb. 9, 2011).

While the promotion of broadband is a laudable goal, the Indiana Commission asserts that the FCC needs to appreciate that the existing USF programs provide much needed support for the existing broadband deployed in rural areas, which regardless of whether operated in a circuit-switched or IP-based environment, are not sustainable without support. The FCC should be careful to not undercut existing rural broadband availability in pursuit of further deployment of broadband in rural areas. The Indiana Commission is aware of some Indiana RLECs choosing to not proceed with contemplated fiber-to-the premise broadband deployment that would be funded in part by National Telecommunications and Information Administration (NTIA) and Rural Utility Service (RUS) grants or loans under the Broadband Technology Opportunity Program (BTOP) and the Broadband Initiative Program (BIP). These decisions were fed by uncertainty surrounding existing USF as outlined in the NBP and as a result, potential inability to repay those loans. The FCC needs to recognize that dramatic changes in policy will harm, not encourage, broadband deployment by the carriers who have already demonstrated a willingness and ability to build out in rural areas today. Furthermore, the FCC should provide for not only capital support for broadband but operation and maintenance (O&M) support as well. Such O&M support is hinted at in the NBP and the USF/ICC, but not in sufficient depth or detail to merit support at this time.

Maintaining the Size of the Fund

The FCC proposes to achieve all of these revolutionary, paradigm-shifting objectives by putting all of the universal service programs – or at least the high-cost programs - on a budget. The baseline proposal seems to be to keep the sum of CAF support and any remaining high-cost support at no more than total 2010 high-cost support levels. However, the FCC also asks whether the CAF should be the vehicle for providing all universal service support, not just high-cost support – in which case, the relevant 2010 budget figure would be the combined 2010 total for all four USF programs (high-cost, E-rate, rural health care, and low-income) and not just for the high-cost programs.

A partial list of potential uses to which the CAF may be put in the future includes the following:

- The FCC is seeking comment on a variety of proposals for allowing carriers to recover (from the CAF) at least some of the intercarrier compensation (ICC) revenue they might lose under various ICC reform proposals – perhaps in conjunction with increases in interstate SLC rate levels and/or modifications to the interstate SLC rate structure.²⁰
- The FCC is seeking comment on AT&T's proposal to support both wireline and wireless carriers from the CAF – up to one wireline and one

²⁰ *Id.* at ¶ 400, 559 - 602.

wireless carrier in a particular area - instead of (at most) one provider, regardless of technology.²¹

- The FCC is seeking comment on using the CAF to fund the entire universal service program (incl. high-cost, E-rate, rural health care, and low-income), not just high-cost programs.²²

The Indiana Commission categorically rejects the proposed funding of all USF programs from the funding pool of existing high-cost programs alone.

Need to Define Broadband

Given the list of potential uses for the CAF, the FCC long term proposals have a real potential to actually balloon USF expenditures. Indeed, the Indiana Commission is very skeptical of the FCC's claims that it can repurpose existing high-cost support – and perhaps even the entire universal service regime – without an increase in fund size. The FCC has failed to clearly identify what broadband services would be supported or even to clearly define the term “broadband” in the context of the CAF support. In this regard, the Indiana Commission echoes the comments and concerns of Commissioner James Cawley of the Pennsylvania Public Utility Commission in the Joint Board's Lifeline Recommended Decision:

“Aside from the NBP itself, the FCC staff recognized in its September 29, 2009 presentation that the cost of any national broadband plan varies widely depending on the definition of ‘broadband.’ These costs range from approximately \$20 billion for 1.5 mbps to \$350 billion for 100 mbps. A proposed speed in the 1 – 4 mbps range could cost from \$20 billion to \$35 billion. It is difficult to see how the current \$9 billion federal USF can implement any of these proposed national broadband definitions, even with repurposing the entire current USF.”²³

Before the FCC can responsibly move forward with replacing existing USF programs with the CAF to support broadband, including continuing support, the FCC needs to clearly define the speed of broadband to be supported and coordinate that with the availability of limited USF funding. Additionally, the FCC needs to consider that some rural areas do not have broadband because the incumbent carrier made a business decision to not deploy broadband facilities, not because it is uneconomic to do so. However, just because one carrier chose not to

²¹ *Id.* at ¶ 403.

²² *Id.* at ¶ 416.

²³ *In the Matter of Federal State Joint Board on Universal Service*, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109, Recommended Decision of the Federal State-Joint Board on Universal Service (“RD”), “Statement of Chairman James H. Cawley”, 45 (FCC 10J-3: rel. Nov. 4, 2010).

make broadband infrastructure investments does not mean that a subsidy is necessarily required to make the offering of broadband economic. In Indiana, subsequent to the acquisition by Frontier Corp of former Verizon properties, Frontier plans to deploy, without subsidy and within 18 months after acquiring the Verizon properties, broadband to approximately 40% of areas which were unserved by Verizon.

Interconnected Issues between Lifeline NPRM and USF/ICC NPRM

As noted above, the FCC holds out the possibility that all USF programs, including the low-income program, could ultimately be funded through the CAF.²⁴ The amount of support to be provided for Lifeline service is unknown at this time. It will be determined through the operation and interaction of two sets of factors: potential changes to: (1) eligibility, verification, and outreach requirements²⁵; and (2) the extent to which low-income support is provided for prepaid wireless providers and broadband services. The FCC is addressing potential changes to the low-income program through a separate NPRM,²⁶ to which the IURC intends to file comments. The Indiana Commission believes it is imperative that any “low-income” USF program changes be considered together with the proposed changes to the other universal service programs and proposed changes to intercarrier compensation, in a holistic fashion. As both the Universal Service Joint Board and the FCC have recently noted, the size of the low-income fund has grown significantly in the last few years, and further increases are expected. Former Federal-State Joint Board State Chairman Ray Baum observed that if left unchecked the low-income fund could easily reach \$2 billion. Any attempts to control the overall size of the universal service support mechanisms must take into account the size of the low-income fund, in addition to the size of the high-cost fund today and the size of the CAF in the future.

The Indiana Commission supports immediate action to control the size of the low-income fund – including setting caps on the amount of support to be provided, as discussed further below. However, any cap should be designed in a manner that does not penalize states that have a large number of remaining unserved Lifeline eligible citizens. Indiana also has lower overall telephone penetration rates than the national average. The IURC has taken a strong stance against wasteful or unnecessary use of universal service funds. However, the IURC has also taken steps to approve carriers that serve the low-income market, are effective at marketing the Lifeline program, and take measures to control abuse of the program. With time and designation of ETCs that target the low income Indiana consumers, the IURC is optimistic that the Lifeline take rate will improve. Any cap the FCC may ultimately implement should take into consideration unserved, eligible customers and allow states room to improve and should not penalize those states that are: (1) taking steps to improve their Lifeline subscribership rates,

²⁴ *In the Matter of Connect America Fund*, et al., WC Docket No. 10-90, para. 416 (FCC 11-13, rel. Feb. 9, 2011).

²⁵ RD, Sections II, IV, and VI; RD, Section VII and separate statements of the state members.

²⁶ *In the Matter of Lifeline and Link-Up Reform and Modernization*, et al., WC Docket No. 11-42, Notice of Proposed Rulemaking (FCC 11-32, rel. March 4, 2011).

while (2) still attempting to control waste, fraud, and abuse and limit the growth in the size of the fund.

Proposals for Immediate Intercarrier Compensation (ICC) Reforms

State Rate-Making Authority

In the USF/ICC NPRM, the FCC is also contemplating significant changes to the intercarrier compensation regime. These proposals have the potential to affect the roles in rate making played by the FCC and state commissions. Historically, the FCC has almost exclusively set interstate rates and state commissions established intrastate rates. The FCC has proposed the possibility of applying Section 251(b)(5) to all telecommunications traffic (intra and interstate) with the FCC developing a single methodology for intercarrier compensation.²⁷ If the FCC takes this approach, it would represent a substantial encroachment into what has been the exclusive jurisdiction of state commissions as well as a direct assault on Congressional intent.

The FCC proposes alternatively to adopt a new methodology that would reduce reciprocal compensation charges but could leave the categories of telecommunications traffic that are currently subject to the reciprocal compensation obligation under section 251(b)(5) untouched. That approach would leave intrastate and interstate access charges under their current regulatory structures and permit separate glide paths for all three types of traffic.²⁸ While this second option seems to preserve state rate-making authority, actions taken by the FCC to establish new interstate intercarrier compensation and/or USF mechanisms still could indirectly impact rates set by states. This Hobson's choice proposal has been characterized by some observers with only slight exaggeration, as "pre-empt me now or pre-empt me later."

The Indiana Commission urges the FCC to show continued respect, directly and indirectly, for state authority to set intrastate prices. State commissions not only have a role to play in the setting of intrastate access and local exchange rates, but also in rates established under Section 252(d) as part of Section 251 arbitration proceedings of interconnection agreements that are conducted by states. The Indiana Commission no longer establishes retail rates for either basic or non-basic telecommunications service.²⁹ However, the Indiana Commission continues to play an active role in approval and arbitration of Section 251/252 proceedings. The Indiana Commission's website lists 19 active Section 251/252 arbitration agreements in effect in Indiana. Furthermore, the Indiana Commission presides over disputes regarding the proper interpretation or implementation of interconnection agreements under the Indiana Commission's own "rocket docket" rules.³⁰ These proceedings document the importance of continued state participation in arbitration of interconnection agreements and disputes. They also highlight the need for continued participation by states in the formulation of

²⁷ USF/ICC NPRM ¶ 512.

²⁸ *Id.* at ¶ 518.

²⁹ House Enrolled Act 1279, Sections 15 and 17 (2006), codified at I.C. 8-1-2.6-1.2 and 8-1-2.6-1.4.

³⁰ 170 IAC 7-7.

national policy on intercarrier compensation and access charges, as well as universal service issues.

Although some state commissions, like Indiana, may also be operating under deregulated rates, other states still have authority to set at least some local exchange rates. Except under very limited circumstances, such as may attach to some interstate EAS rates, the FCC is prohibited under Section 152(b) of the Communications Act of 1934 from setting local retail rates. The Indiana Commission believes that both historical judicial precedent and the federal Telecommunications Act of 1996 (TA 96) contemplate an important and substantive role for states in the establishment of intrastate telecommunications rates. Congress has not repealed this dual regulatory framework.

Additionally, because of the interrelationships between intercarrier compensation, universal service support, and retail rates, any changes by the FCC can result in higher local retail rates, whether or not they are regulated by a state commission. While rate increases could be an appropriate outcome for a particular company under a particular set of circumstances, the FCC should guard against adopting policies that would automatically result in forced, arbitrary local rate increases to all companies under all circumstances, or force them into an uncompetitive situation. In summary, absent more comprehensive proposals to address loss of revenue due to the phase out of ICC, the Indiana Commission does not concede the FCC's authority to set either reciprocal compensation rates and charges for traffic subject to 251(b)(5), or intrastate access rates and charges under Section 251(g)³¹ or other statutes, rules, or decisions.

Beyond questions of jurisdiction, it is not apparent that there is a need to replace intrastate access rates and charges set and/or approved by state commissions with either reciprocal rates or intrastate access charges established by the FCC for states in which ILECs' intrastate access tariffs mirror interstate access tariffs. Indiana is one of those states.

Importance of the Joint Board on Universal Service

In addition to individual state commission authority to establish intrastate rates, federal law also contemplates an important role for states in the setting of USF policy through participation in the Federal-State Joint Board on Universal Service. As previously stated above, USF policy can have an indirect impact on intrastate rates. The Indiana Commission has long recognized the importance of state participation in the formulation of federal policy that can impact intrastate rates. At least three different Indiana commissioners have participated actively on the Federal-State Joint Board on Universal Service (USF Joint Board) since the passage of the Telecommunications Act of 1996.³² Accordingly, the Indiana Commission urges the FCC to carefully consider input from the USF Joint Board on any changes to the intercarrier compensation regime.

³¹ See, e.g., *WorldCom, Inc. v. FCC*, No. 01-1218, 288 F.3d at 432 (D.C. Cir., May 3, 2002).

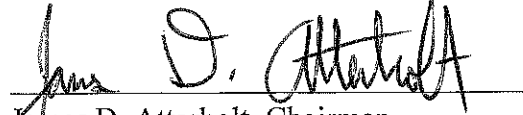
³² Commissioner Larry S. Landis is a current member of the Joint Board.

Conclusion

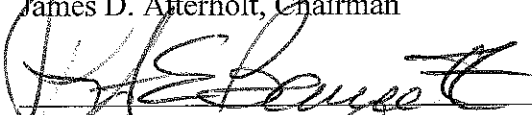
The Indiana Commission appreciates the opportunity to offer its comments on the reforms of USF and Intercarrier compensation as outlined in the USF/ICC NPRM. Furthermore, the Indiana Commission applauds the FCC's willingness to tackle long overdue and necessary updates needed to USF programs in order to improve efficiencies and ensure that not only basic, but advanced, telecommunications is available in rural America. However, the Indiana Commission cautions the FCC to proceed carefully with reforms of USF and Intercarrier Compensation. Many carriers and consumers depend on the programs as currently structured. Any change to USF and Intercarrier Compensation mechanisms must be done with adequate protections for the existing availability of telecommunications, basic and advanced. Efforts to expand the availability of broadband need not, and should not, jeopardize current telecommunications offerings in rural areas and past gains in making advanced telecommunications more widely available there as well. States have an important role to play in the setting of telecommunication policy, and the reform of USF and Intercarrier Compensation should be no different.

Respectfully submitted this 18th day of April, 2011.

INDIANA UTILITY REGULATORY COMMISSION



James D. Atterholt, Chairman



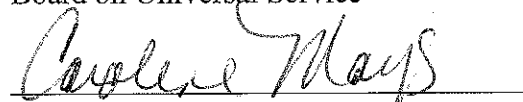
Kari A. E. Bennett, Commissioner



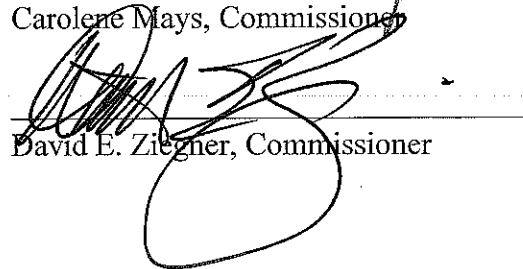
Larry S. Landis, Commissioner

Member, Federal-State Joint

Board on Universal Service



Carolene Mays, Commissioner



David E. Ziegner, Commissioner